

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TONYA MENDOZA,)	
)	Civil Action
Plaintiff)	No. 05-CV-03589
)	
vs.)	
)	
JO ANNE B. BARNHART,)	
Commissioner of)	
Social Security)	
)	
Defendant)	

O R D E R

NOW, this 11th day of August, 2006, upon consideration of Plaintiff's Motion for Summary Judgment, filed November 23, 2005; upon consideration of Defendant's Brief in Opposition to Plaintiff's Motion and in Support of Defendant's Motion for Summary Judgment, filed December 20, 2005; upon consideration of the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter, filed June 30, 2006; upon consideration of plaintiff's Complaint, defendant's Answer and after a thorough review of the record in this matter; it appearing that neither party filed objections to Magistrate Judge Rueter's Report and Recommendation; it further appearing that Magistrate Judge Rueter's Report and Recommendation correctly determined the legal issues presented in this case,

IT IS ORDERED that Magistrate Judge Rueter's Report and Recommendation is approved and adopted.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is granted in part and denied in part.¹

IT IS FURTHER ORDERED that to the extent Plaintiff's Motion for Summary Judgment seeks to have this court vacate the decision of the Secretary of the Social Security Administration and award benefits to plaintiff, plaintiff's motion is denied.

IT IS FURTHER ORDERED that to the extent Plaintiff's Motion for Summary Judgment seeks to have this court vacate the decision of the Secretary of the Social Security Administration and remand this case for further proceedings, plaintiff's motion is granted.

IT IS FURTHER ORDERED that to the extent Plaintiff's Motion for Summary Judgment seeks fees and other expenses as provided by the Equal Access to Justice Act, 28 U.S.C.

§ 2412(d)(1)(A), plaintiff's motion is denied without prejudice for plaintiff to refile her request a in motion accompanied by a memorandum of law.²

¹ Although the plaintiff states in Plaintiff's Motion for Summary Judgment that she requests that the court enter judgment in her favor, she does not articulate what, if any, specific relief such a judgment would afford her. Nevertheless, it appears that plaintiff requests that the court either award her benefits "under Title XVI of the Social Security Act" or remand this case to the "administrative level". Plaintiff's request for benefits is in her accompanying proposed Order of the Court, and her request to remand is in her Brief in Support of Plaintiff's Motion for Summary Judgment.

² Although not requested specifically in plaintiff's Motion for Summary Judgment or the accompanying proposed Order of the Court, the last line of plaintiff's Brief in Support of Plaintiff's Motion for Summary Judgment "requests that she be awarded fees and other expenses, including attorney's fees, as allowed by the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A)."

IT IS FURTHER ORDERED that this case is remanded in accordance with the fourth sentence of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration for further proceedings consistent with the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter.

IT IS FURTHER ORDERED that judgment is entered in favor of plaintiff and against defendant.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case closed for statistical purposes.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge